IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.1162 OF 2001

IN

WRIT PETITION NO.2387 OF 1999

...

Shri Harishchandra Tukaram
Ghag ...Appellant

v/s.

The Board of Trustees of the
Port of Mumbai ...Respondent

AND

APPEAL NO.848 OF 2001

IN

WRIT PETITION NO.2386 OF 1999

...

Shri Ramesh R. Jadhav ...Appellant

v/s.

The Board of Trustees of the
Port of Mumbai ...Respondent

Mr.Jaiprakash Sawant for the Appellant.

Mr.Umesh Shetty with Mr.A.H.Gokhale and

Mr.K.C.Rasputra i/b Little & Co. for the Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 13TH SEPTEMBER, 2007

P.C.:

1. Both these Appeals are directed against the same order passed by the learned single Judge dated 9-2-2001 in Writ Petition No.2386 of 1999 and Writ Petition No.2387 of 1999. Those writ petitions were filed by the present Respondents challenging the awards passed by the Central Government Industrial Tribunal in Reference No.2/46 and Reference No.2/47, both of 1997. By those awards, which related to the two workers by name Mr.Harishchandra Tukaram Ghag and Mr.Ramesh R.Jadhav, the Industrial Tribunal held that the misconduct alleged against them was not proved and therefore the punishment was set aside and they

were ordered to be reinstated in service with full back wages.

2. The learned single Judge has set aside both the awards made by the Industrial Tribunal and has held that both the workers were guilty of misconduct alleged against them and therefore, the punishment was properly imposed on them.

3. The learned Counsel appearing for the Appellants, at the out set, submitted that the departmental inquiry was held against six workers. Out of those six workers, reference under the Industrial Dispute Act was made in relation to three workers, two workers are the Appellants in these two Appeals and one employee by name Mr.G.B.Masavkar was also directed to be reinstated by the Industrial Tribunal, the employer had filed Writ Petition No.3185 of 2004 before this court. The learned single Judge of this court by order dated 26-6-2007 has remitted the matter back to the Industrial Tribunal for reconsideration of the material on record and for deciding the reference afresh. The learned Counsel submitted that as the fact and law involved in these two Appeals is similar, same course of action should

be followed in these Appeals also.

4. The learned Counsel appearing for the Respondents, on the other hand, opposed the request. According to him, the learned single Judge has considered the entire evidence on record and has held that as the confessional statements made by the two Appellants were admissible in evidence and as by the confessional statements they have admitted their guilt, the Industrial Tribunal was not justified in setting aside the punishment imposed on them.

5. In the light of these rival submissions, we have perused the record of the case. Perusal of the record of the case shows that though the Police Officer P.W.7 Mr.Kachare has stated that all the six workers had made their statements before the Police authority. In his deposition he does not specify what was the exact statements made by these two Appellants. He also does not claim that by those statements they admitted their guilt. After having gone through the record, we find that the learned single Judge while recording the finding, based only on the confessional statements alleged to have been made by the two Appellants, has not referred to as to

what was the exact confessional statement made by these two Appellants. In our opinion, the finding recorded by the learned single Judge that the Police Sub-Inspector has proved the confessional statement is doubtful. Because as observed above, the Police Officer does not specify as to what was the nature of the statements made by the two Appellants. As it is an admitted position that these two Appellants and Mr.Masvakar were involved in the same incident, departmental inquiry was common and as because of the order passed by the learned single Judge in Writ Petition No.3185 of 2004, the Industrial Tribunal is reconsidering the entire evidence on record, in our opinion, it will be appropriate to follow the same course in relation to these two Appellants who were also employed with the Respondent. In our opinion, therefore, following order would meet the ends of justice.

O R D E R

(i) The judgment of the learned single Judge impugned in these Appeals is set aside, so also the awards made by the Central Government Industrial Tribunal, which were impugned in Writ Petition No.2386 of 1999

and Writ Petition No.2387 of 1999.

(ii) The references in relation to both the Appellants are remitted back to the Central Government Industrial Tribunal for reconsideration of the said references on the basis of evidence which is already adduced by both the parties and which is on record. It is clarified that it will not be necessary and it will not be permitted by the Industrial Tribunal to both the parties to lead any additional evidence.

(iii) The references shall be decided by the Industrial Tribunal on the basis of the evidence which is already on record. It is clarified that the Industrial Tribunal shall take into consideration the evidence which has been led in the inquiry before the Disciplinary Authority.

(iv) These two references shall be heard with Reference No.54 of 1997 in relation to Shri Masavkar and the three references shall be decided together.

(v) Appeals disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)